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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,109

03/30/2005

Brian L Riise

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EXAMINER

CAIN, EDWARD J

ART UNIT

PAPER NUMBER

1796

NOTIFICATION DATE

DELIVERY MODE

02/11/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No. 10/511,109	Applicant(s) RIISE ET AL	
	Examiner Edward J. Cain	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 68,70-75,77-79,81,82,84,85,87,88 and 92-114 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8,70-75,77-79,81,82,84,85,87,88 and 92-114 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/12/04, 2/13/06, 10/2/08, 1/12/09</u> . | 6) <input type="checkbox"/> Other: _____ |

The response to the restriction requirement received 29 September 2008 has been made of record. Claims 68, 70-75, 77-79, 81, 82, 84, 85, 87, 88 and 92-114 are pending.

The restriction requirement made in the previous office action is withdrawn in view of applicants' arguments and amendments.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 68, 70-75, 77-79, 81, 82, 84, 85, 87, 88 and 92-114 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 68 and 92 require the primary polymer to be of a single type and of two or more grades. Different polymer grades are specified as "different polymer structure". It is unclear to the examiner how a polymer of a single type can be of multiple polymer structures.

Dependent claims 77, 82, 85 and 88 each recite a secondary polymer which can comprise 0 parts of a first polymer and 0 parts of a second polymer. This yields a composition wherein no secondary polymer is present. This condition contradicts claim 68 upon which these claims depend.

In claim 92, lines 6-8 appear to be redundant.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 68, 70-75, 77, 79, 81, 82, 85 and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schallenberg in view Landry and Gareiss et al.

. Schallenberg discloses recycled plastic compositions and methods for their production.

These compositions are taught as comprising mixtures of two or more types of thermoplastic including ABS, SAN, PC, PP, PE, PS etc. (see column 3, lines 40-51).

The plastics material used by the reference is taught as comprising different types and grades (column 1, lines 45-60). Contaminants such as dye residue are taught as inherent to many of the materials contemplated for use by the reference (column 1, lines 62-65). It is the position of the examiner that detectable oxidation would be inherent to any or all of the waste materials contemplated by the reference since these materials have been through an initial production step to form the product which later became waste and have been exposed for varying lengths of time to natural processes resulting in oxidation.

The presence of heavy metals such as claimed in instant claim 75 is seen as inherent to the materials of the reference since the source of materials of the reference is seen as similar to that of the instant invention.

This reference fails to explicitly teach the use of bromine and antimony containing compounds, titanium dioxide and carbon black in applicants' claimed amounts and physical properties.

Landry teaches the art known use of brominated compounds in conjunction with antimony compounds as fire retardant/synergist additives for resins including many of those instantly recited. Relative amounts such as claimed instantly are further taught (column 4, line 48 to column 5, line 20).

Gareiss et al teaches the use of carbon black and titanium dioxide as pigments in resin compositions comprising ABS, polycarbonate etc (column 8, lines 1-26 and column 9, lines 5-8). While specific amounts of pigments are not explicitly taught, amounts such as claimed instantly are seen as customary in the art when these materials are used as pigments rather than filler.

It would have been obvious to one of ordinary skill in the art to utilize typical waste materials containing typical additives as taught by the secondary references in the process/products of the primary reference.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 68 and 70 are rejected under 35 U.S.C. 102(e) as being anticipated by Schallenberg in view of the teaching reference to Suzuki.

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Schallenber discloses recycled plastic compositions and methods for their production. These compositions are taught as comprising mixtures of two or more types of thermoplastic including ABS, SAN, PC, PP, PE, PS etc. (see column 3, lines 40-51). The plastics material used by the reference is taught as comprising different types and grades (column 1, lines 45-60). Contaminants such as dye residue are taught as inherent to many of the materials contemplated for use by the reference (column 1, lines 62-65). It is the position of the examiner that detectable oxidation would be inherent to any or all of the waste materials contemplated by the reference since these materials have been through an initial production step to form the product which later became waste and have been exposed for varying lengths of time to natural processes resulting in oxidation.

The presence of heavy metals such as claimed in instant claim 75 is seen as inherent to the materials of the reference since the source of materials of the reference is seen as similar to that of the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Cain whose telephone number is (571) 272-1118. The examiner can normally be reached on M-F, 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Edward J. Cain
Primary Examiner
Art Unit 1796

/Edward J. Cain/
Primary Examiner, Art Unit 1796